

LOCKWOOD SCHOOL EASEMENT RE-LOCATION AGREEMENT

The Lockwood School District wishes to expand its school facilities, which would interfere with the State's access to its school trust lands within the SE¼ of Section 36, Township 1 North, Range 26 East, MPM, in Yellowstone County, Montana. The Lockwood School District, DNRC, and Yellowstone County seek the Board's approval for a re-location of the State's access route. The State would relinquish the current right-of-way location, and the School District and Yellowstone County would grant a new location for a right-of-way to provide access to these lands that are held in trust for common public schools. A copy of this Easement Re-location Agreement is enclosed.

AGREEMENT FOR RE-LOCATION OF RIGHT-OF-WAY EASEMENT

This Agreement for the re-location of a right-of-way easement is entered into this ____ day of _____, 2007, by and between: the STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, whose address is P.O. Box 201601, Helena, MT 59620-1601; SCHOOL DISTRICT NO. 26, whose address is 1932 Highway 37 East, Billings, MT 59101; and YELLOWSTONE COUNTY, whose address is P.O. Box 35000, Billings, MT 59107-5000.

WHEREAS, School District No. 26 wishes to expand its facilities onto to a right-of-way easement currently held by the State of Montana, DNRC, as the successor-in-interest to the Montana Department of State Lands, within Tracts D-1 and D-4 as shown in Certificate of Survey No. 904 Amended, and wishes to extinguish the easement previously granted to the Montana Department of State Lands via the "Right-of-Way Easement" filed in the records of the Yellowstone County Clerk and Recorder's Office as Document No. 3000245.;

WHEREAS, Yellowstone County holds title to Tract D-5 as shown in Certificate of Survey No. 904 Amended;

WHEREAS, both Yellowstone County and School District wish to provide full legal access to the State of Montana for ingress and egress to the school trust lands located within the SE¹/₄ of Section 36, Township 1 North, Range 26 East, MPM, in Yellowstone County, Montana;

NOW, THEREFORE, the parties agree as follows:

1. Upon the complete execution of this Agreement, the State of Montana shall execute and deliver to School District No. 26 a quit-claim to the current right-of-way held by the State in Tract D-1 and D-4. A copy of this quit-claim deed is attached hereto as Exhibit "A", and is incorporated herein by reference;
2. Upon the complete execution of this Agreement, School District No. 26 shall execute and deliver to the State of Montana, State Board of Land Commissioners, an Amendment to an existing right-of-way easement, which shall re-locate the State's right-of-way to the southeasterly and southern boundaries of Tracts D-1 and D-4. A copy of this Amendment to the March 9, 2004 right-of-way easement is attached hereto as Exhibit "B", and is incorporated herein by reference;
3. Upon the complete execution of this Agreement, Yellowstone County shall execute and deliver to the State of Montana, State Board of Land Commissioners, a right-of-way deed establishing a right-of-way for the State of Montana to access its trust lands. A copy of this

right-of-way deed is attached hereto as exhibit "C", and is incorporated herein by reference;
the State's right;

4. This Settlement Agreement and Release constitutes the entire agreement between the
subscribing parties, and its provisions are contractual in nature and not merely recitals.

Entered into the day and year last above written,

**STATE OF MONTANA, DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION**

By: _____
Mary Sexton, Director
Montana DNRC

SCHOOL DISTRICT NO. 26

By: _____
Eileen Johnson, Superintendent
School District No. 26

YELLOWSTONE COUNTY

By: _____
James "Jim" Reno, Chairperson
Yellowstone County Commissioner

By: _____
William "Bill" Kennedy
Yellowstone County Commissioner

ATTEST: _____
Tony Nave
Clerk and Recorder

By: _____
John Ostlund, Member
Yellowstone County Commissioner

STATE OF MONTANA)
)ss.
County of Lewis and Clark)

On this ____ day of _____, in the year 2007, before me, a Notary Public for the State of Montana personally appeared Mary Sexton, Director of the Montana Department of Natural Resources and Conservation, the person who signed the forgoing instrument and who acknowledged to me that she executed the same on behalf of the Montana DNRC

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year last above written.

Notary Public in and for the State of Montana
Residing at: _____
My Commission Expires: _____
Printed Name: _____

STATE OF MONTANA)
):ss.
County of Yellowstone)

On this ____ day of _____, in the year 2007, before me, a Notary Public for the State of Montana personally appeared Eileen Johnson, Superintendent for School District No. 26, the person who signed the forgoing instrument and who acknowledged to me that he executed the same on behalf of School District No. 26.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal
the day and year last above written.

Notary Public in and for the State of Montana
Residing at: _____
My Commission Expires: _____
Printed Name: _____

[SEAL]

STATE OF MONTANA)
):ss.
County of Yellowstone)

On this ____ day of _____, in the year 2007, before me, a Notary Public for the State of Montana personally appeared James "Jim" Reno, John Ostlund, and William "Bill" Kennedy, members of the Yellowstone County Board of County Commissioners, and Tony Nave, the Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached Right-of-Way Relocation Agreement

on behalf of Yellowstone County in their official capacity as Board Members and the Clerk and Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL]

Notary Public in and for the State of Montana
Residing at: _____
My Commission Expires: _____
Printed Name: _____

EXHIBIT "A": STATE TO LOCKWOOD SCHOOL DISTRICT #26

Right of Way Application No. _____
Sec. 36 Twp 1N., Rge 26E., P.M.M.,
Yellowstone County, Montana

EASEMENT NO. _____

RIGHT OF WAY EASEMENT

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IN THE NAME AND BY THE AUTHORITY OF THE STATE OF MONTANA,
TO ALL TO WHOM THESE PRESENTS SHALL COME:

The STATE OF MONTANA, State Board of Land Commissioners, whose address is P.O. Box 201601, Helena, MT 59620-1601 (hereinafter referred to as "Grantor"), in consideration of reciprocal rights of way and the sum of one Dollar (\$ 1.00), the receipt and sufficiency of which are hereby acknowledged, hereby quitclaims to School District #26, whose address is 1932 Highway 87 East, Billings, MT 59101, and to its successors, and assigns forever (hereinafter referred to collectively as "Grantee"), all its interest in:

a road easement previously conveyed by School District #26 to the Montana Department of State Lands on April 17, 1998 running across portions of Tract D1 and D4, as shown in Certificate of Survey 904, Amended; and Tracts A and B, as shown in Certificate of Survey No. 918, within the NE¼ of Section 36, Township 1 North, Range 26 East, MPM, in Yellowstone County, Montana. By this document, the State of Montana extinguishes any interest in the easement described in the "Right-of-Way Easement" filed in the records of the Yellowstone County Clerk and Recorder's Office as Document No. 3000245.

IN TESTIMONY WHEREOF, the Sate of Montana has caused these presents to be executed by the Governor, and to be attested by the Secretary of State, and countersigned by the Director of the Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed, this ____ day of _____, 2007.

.....

Governor of the State of Montana

ATTEST:

.....
Secretary of State

Countersigned by:

.....
Director, Department of Natural Resources
And Conservation

EXHIBIT "B": LOCKWOOD SCHOOL DISTRICT #26
AMENDMENT TO
RIGHT OF WAY EASEMENT
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WHEREAS, on March 9, 2004, the Lockwood School District No. 26, Yellowstone County, Montana, whose address is 1932 Highway 37 East, Billings, MT 59101 (hereinafter referred to as the "School District"), executed and granted a right-of-way easement in favor of Merlin Myers and Marcia Myer (hereinafter referred to as the "Myers Grantees") of 217 South Picolo Lane, Billings, Montana, the Yellowstone County Park Board (hereinafter referred to as the "County"), and the Montana Department of State Lands (hereinafter referred to as "DNRC"). This easement was filed with the Yellowstone County Clerk and Recorder's office on April 21, 2004 as Document No. 3284449;

WHEREAS, the easement identified as Document No. 3284449 was intended to grant a right-of-way 60 feet in width across the School District's servient tenement lands identified therein for the benefit of DNRC's dominant tenement lands within the SE¼ of Section 36, Township 1 North, Range 26 East, MPM, in Yellowstone County, Montana;

WHEREAS, the easement identified as Document No. 3284449 mis-identified the state agency which should have held the easement;

WHEREAS, the easement identified as Document No. 3284449 erroneously limited DNRC's use of the easement to public access for recreational purposes, while the School District intended that DNRC's use of the easement should have been for all lawful uses of DNRC's dominant tenement;

NOW, THEREFORE, the undersigned Lockwood School District No. 26, Yellowstone County, Montana, hereby amends the easement dated March 9, 2004 granted to the Montana Department of State Lands, and filed with the Yellowstone County Clerk and Recorder's Office on April 21, 2004 as Document No. 3284449, as follows:

On page two, line (3) of the easement, the following language (which identifies one of the grantees) should be stricken:

the Montana Department of State Lands, Department of Agriculture, 321 South 24th Street West, Billings, Montana 59102.

In place of the stricken language, the following language should be inserted:

The Montana State Board of Land Commissioners, in trust for common public schools, whose address is % DNRC, P.O. Box 201601, Helena, MT 59620-1601.

On page two, paragraph two of the easement, the following language should be stricken:

The Easement granted the Park Board and the Department of (sic) shall be for the use of the public to access their property for recreational purposes and other public purposes consistent with current use.

In place of the stricken language, the following language should be inserted:

This right-of-way easement granted to the Park Board and the State Board of Land Commissioners shall allow the Grantees, and their successors and assigns, and the general public, the right to utilize the right-of-way easement for ingress and egress to their dominant tenement lands for all lawful purposes, and for the installation, operation, and maintenance of underground utilities to the dominant tenement lands, without imposition of any of the restrictions or conditions which have been placed upon the Myers' use of the easement, as provided herein below.

The State's use of the right-of-way granted hereby shall be non-exclusive and shall not reasonably interfere with the use of the easement by the Grantor, or the Myers, or the Park Board as provided for herein. Grantor, its successors and assigns, may utilize such right-of-way in connection with the use, management, development, and preservation of its lands, provided that such use does not unreasonably interfere with the use by the State.

This easement shall be for the benefit of the lands of Grantee, held in trust for common public schools, located in Yellowstone County, Montana, more particularly described as follows:

TOWNSHIP 1 North, RANGE 26 East, P.M.M.
Section 36: SE $\frac{1}{4}$

This easement shall be appurtenant to both the lands benefited and burdened hereby and shall run with the land. The above grants and conveyances are subject to all matters of public record as of the date of this easement.

The easements and rights of way conveyed herein are for the purposes of constructing, reconstructing, maintaining, repairing, and using a road or road segments (hereinafter called "road") for access by the Grantee for all lawful purposes including the general public to, and for the provision of underground utilities to, the State lands as described above, over and upon said easement and right-of-way.

IN WITNESS WHEREOF, the School District has executed this instrument as of the day and year first above written.

GRANTOR:

Eileen Johnson, Superintendent
School District #26

STATE OF MONTANA)
 :ss.
County of Yellowstone)

On this ____ day of _____, in the year 2007, before me, a Notary Public for the State of Montana personally appeared Eileen Johnson, Superintendent for School District No. 26, the person who signed the forgoing instrument and who acknowledged to me that he executed the same on behalf of School District No. 26.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL]

Notary Public in and for the State of Montana
Residing at: _____
My Commission Expires: _____
Printed Name: _____

EXHIBIT "C": YELLOWSTONE COUNTY TO STATE

RIGHT OF WAY EASEMENT

THIS RIGHT OF WAY EASEMENT, dated this ____ day of _____, 2007, is hereby granted by Yellowstone County, a political subdivision of the State of Montana, whose address is P.O. Box 35000, Billings, MT 59107-5000, hereinafter referred to as "Grantor," to the STATE OF MONTANA, DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, whose address P.O. Box 201601, Helena, Montana 59620-1601, hereinafter referred to as "Grantee."

WITNESSETH:

Grantor, for and in consideration of Grantee's relinquishment of a previous easement, and other good and valuable consideration received by Grantor, the receipt and sufficiency of which are hereby acknowledged, does hereby grant to Grantee and to its successors and assigns forever, subject to existing easements and valid rights, a perpetual, non-exclusive easement for a right-of-way sixty feet (60') in width, to locate, construct, use, maintain, improve, and repair an access road for all lawful purposes, including the general public and for the provision of underground utilities to, the lands of the Grantee described below, which easement shall be over, under, upon, and across the lands of the Grantor located in Yellowstone County, Montana, more particularly described as follows:

a right-of-way sixty feet (60') in width, beginning at easternmost intersection of the southwest corner of Tract D-4 and the northeast corner of Tract D-5, then proceeding southerly along the east 60 feet of Tract D-5, to the northwest corner of southeast quarter of Section 36, Township 1 North, Range 26 East, MPM in Yellowstone County, Montana, as is shown in Certificate of Survey 904 Amended, within the NE¼ of Section 36, Township 1 North, Range 26 East, MPM,

The easement area may include such additional width as required for accommodation and protection of cuts and fills, and for the placement of fencing and or privacy landscaping. Additional width must be approved in writing by the Grantor.

Grantee's use of the right-of-way granted hereby shall be non-exclusive, and Grantor, its successors and assigns, may utilize such right-of way in connection with the use, management, development, and preservation of its lands, provided that such use does not unreasonably interfere with the use by Grantee.

This easement shall be for the benefit of the lands of Grantee, held in trust for common public schools, located in Yellowstone County, Montana, more particularly described as follows:

TOWNSHIP 1 North, RANGE 26 East, P.M.M.
Section 36: SE ¼

This easement shall be appurtenant to both the lands benefited and burdened hereby and shall run with the land. The above grants and conveyances are subject to all matters of public record as of the date of this easement.

The easements and rights of way conveyed herein are for the purposes of constructing, reconstructing, maintaining, repairing, and using a road or road segments (hereinafter called "road") for access by the Grantee for all lawful purposes including the general public to, and for the provision of underground utilities to, the State lands as described above, over and upon said easement and right-of-way.

Grantor may grant to third parties, upon such terms as it chooses, any or all of the rights reserved by it herein; provided that use by such third party shall be subject to the terms and conditions of this easement and shall not unreasonably interfere with the rights granted hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

GRANTOR:

James "Jim" Reno, Chairperson
Yellowstone County Commissioner

John Ostlund, Member
Yellowstone County Commissioner

William "Bill" Kennedy
Yellowstone County Commissioner

ATTEST: _____
Tony Nave
Clerk and Recorder

STATE OF MONTANA)
 :ss.
County of Yellowstone)

On this ____ day of _____, in the year 2007, before me, a Notary Public for the State of Montana personally appeared James "Jim" Reno, John Ostlund, and William "Bill" Kennedy, members of the Yellowstone County Board of County

Commissioners, and Tony Nave, the Yellowstone County Clerk and Recorder, and acknowledged to me that they executed the attached Right-of-Way Easement Deed on behalf of Yellowstone County in their official capacity as Board Members and the Clerk and Recorder.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public in and for the State of Montana

Residing at: _____

My Commission Expires: _____

Printed Name: _____

[SEAL]

GRANTEE: